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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

FIRST MIDLAND, INC.,

Cross-complainant and Appellant,

v.

ERNEST HARGRESS et al.,

Cross-defendants and Respondents.

B200895

(Los Angeles County  
Super. Ct. No. BC349180)

APPEAL from an order of the Superior Court of Los Angeles County.

Haley J. Fromholz, Judge. Affirmed.

Halavais & Associates, Coby R. Halavais, Thomas G. Kemerer for Cross-complainant and Appellant.

Ollie P. Manago for Cross-defendants and Respondents Ernest Hargress and Barbara Hargress.

Levinson Arshonsky & Kurtz, Richard I. Arshonsky, Anne C. Manalili for Cross-defendant and Respondent Principal Residential Mortgage, Inc.

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An investor “purchased” real property at a nonjudicial foreclosure sale six months *after* a court extinguished the foreclosing party’s “right, title, estate, lien [and] interest” in the property. The owners of the property sued the investor to quiet title. The investor cross-complained, challenging the validity of the judgment extinguishing its predecessor’s interest in the property. The trial court dismissed the cross-complaint. We affirm. The investor has no standing to challenge the validity of the judgment against its predecessor.

## **FACTS**

### **The First Lawsuit**

Respondents Ernest and Barbara Hargress own real property on Normandie Avenue in Los Angeles (the Property). The Hargresses encumbered the Property with two deeds of trust. A 1992 deed secured repayment to Riffat Khan of a \$600 debt. A second trust deed was executed in May of 2000 in favor of a bank to secure repayment of a note for \$143,354. Soon afterward, the bank assigned its interest in the deed of trust to respondent Principal Residential Mortgage, Inc. (PRMI). In 2003, Khan foreclosed on his trust deed and conducted a trustee’s sale on the Property, selling it to Quincy Reynolds for \$2,700.

In 2004, the Hargresses and PRMI both sued Khan and Reynolds to set aside the trustee’s sale and quiet title to the Property. PRMI asserted that the trustee’s sale was improperly held and conducted, with the Property being sold for an amount (\$2,700) far less than its actual value. PRMI also claimed that Khan and Reynolds had no right, title to or interest in the Property, except for Khan’s interest in the 1992 deed of trust. The Hargresses alleged that neither Khan nor Reynolds recorded a notice of default; therefore, the required statutory notifications were not made prior to the trustee’s sale and the sale was illegal.

PRMI brought a motion for summary judgment in the first lawsuit. It argued that the trustee’s sale was defective, and Reynolds admittedly paid nothing to “purchase” the Property at the purported trustee’s sale. PRMI asked the court to cancel the trustee’s deed conveying the Property to Reynolds, four subsequent deeds of trust from Reynolds

to Khan and two assignments from Khan to other entities. PRMI requested a “a judgment quieting title against the claims of Khan and Reynolds and for a declaration that Plaintiff has a valid lien against the Property, the fee title of which should be in the name of Hargress.”

The court issued its judgment in the first lawsuit in May 2005 (the 2005 Judgment). The 2005 Judgment decrees that (1) the Hargresses “are the sole owners of the title in fee simple” to the Property; (2) the Hargresses’ title is subject to a first trust deed in favor of PRMI (as assignee of the original bank loan); (3) the defendants—including Khan and Reynolds—“own no right, title, estate, lien or interest whatsoever in the Property”; (4) the defendants—including Khan and Reynolds—are enjoined from “interfering with any use and ownership of the Property by [PRMI] and its successors and/or [the Hargresses] and [from] doing any acts inconsistent with [PRMI’s] and its successors and/or [the Hargresses’] rights in and to the Property”; and (5) the purported deeds of trust and assignments recorded in 2003 and 2004 were all nullified and cancelled. The 2005 Judgment was recorded against the Property on July 1, 2005. No appeal was taken from the 2005 Judgment.

#### *Khan’s 2005 Non-Judicial Foreclosure Sale*

In derogation of the 2005 Judgment, which voided Khan’s “right, title, estate, lien or interest” in the Property and enjoined him from interfering with the Property, Khan purported to conduct a second nonjudicial foreclosure on the Property. In this second sale, the Property was “acquired” by appellant First Midland, Inc., on November 7, 2005, for \$24,000. The sale was conducted pursuant to Khan’s original 1992 deed of trust, the one that the court had cancelled in the 2005 Judgment.

#### *First Midland Attempts To Amend The 2005 Judgment*

On May 1, 2006, First Midland resurrected the first lawsuit by filing a motion to amend the 2005 Judgment. First Midland argued that the pleadings in the first lawsuit did not challenge the validity of Khan’s 1992 deed of trust: because PRMI and the Hargresses did not question the 1992 deed of trust, the court improperly eliminated

Khan's deed of trust in the 2005 Judgment. Khan appeared in the action in propria persona.

In a signed order filed on June 19, 2006, the court denied First Midland's motion to amend the 2005 Judgment. The court also denied First Midland's request to file a complaint in intervention. As a sanction for civil contempt of court, the court voided the second foreclosure sale transferring the Property from Khan to First Midland because the sale occurred in direct contravention of the 2005 Judgment.<sup>1</sup> First Midland pursued an appeal from the order denying it leave to intervene. On February 21, 2007, this Court dismissed the appeal at First Midland's request.

#### *The Current Lawsuit*

In 2006, the Hargresses filed suit against Khan, Reynolds, and First Midland, seeking to set aside the 2005 trustee's sale, in which First Midland purportedly acquired the Property, to cancel the instruments conveying the Property to First Midland, and to quiet title to the Property. First Midland filed a cross-complaint against the Hargresses and against "all others who claim an interest" in the Property. In its first amended cross-complaint, First Midland alleges that it acquired the Property in a nonjudicial foreclosure sale in November 2005. First Midland seeks a declaration "that the provisions of the [2005] Judgment . . . which purports to eliminate the subject Deed of Trust are in error, invalid and in excess of the Court's jurisdiction." First Midland also seeks to quiet title to the Property. First Midland amended its cross-complaint to add PRMI as a cross-defendant.

PRMI demurred to the cross-complaint. It asked the court to take judicial notice of the first lawsuit, the 2005 Judgment, First Midland's motions to amend the 2005 Judgment and to intervene in the first lawsuit, and the trial court's rulings on First Midland's motions. In its demurrer, PRMI argued that First Midland is not a bona fide purchaser of the Property because at the time First Midland bought the Property, the 2005

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<sup>1</sup> There is no signed order imposing sanctions for civil contempt of court.

Judgment had been recorded against the Property and First Midland had constructive notice that Khan's trust deed was eliminated. PRMI also argued that the cross-complaint is barred by principles of res judicata and collateral estoppel.

### *The Trial Court's Ruling*

The trial court sustained the demurrers without leave to amend. The court found that the 2005 Judgment is not void and that First Midland, as Khan's successor in interest, is bound by that judgment, which is res judicata as to the claims made in First Midland's cross-complaint. The court dismissed the cross-complaint in a signed order on June 22, 2007.

## **DISCUSSION**

### **1. Appeal And Review**

It appears that the main action between the Hargresses and First Midland is still pending in the trial court. The dismissal of the cross-complaint ends the dispute between First Midland and PRMI. First Midland brought PRMI into the litigation as a cross-defendant. "Where the parties to the cross-complaint are not identical with the parties to the original action, the order [dismissing the cross-complaint] amounts to a final adjudication between the cross-complainants and cross-defendants and is appealable." (*Herrscher v. Herrscher* (1953) 41 Cal.2d 300, 303; *Bank of America v. Lamb Finance Co.* (1956) 145 Cal.App.2d 702, 717.) Thus, the dismissal order in this case is immediately appealable without violating the One Final Judgment rule.

The signed order of dismissal is an appealable judgment. (Code Civ. Proc., § 581d; *Salas v. Sears, Roebuck & Co.* (1986) 42 Cal.3d 342, 345, fn. 3.) The demurrer tests the sufficiency of the plaintiff's claims as a matter of law. (*Traders Sports, Inc. v. City of San Leandro* (2001) 93 Cal.App.4th 37, 43-44.) We review de novo the ruling on the demurrer, exercising our independent judgment to determine whether a cause of action has been stated. (*Desai v. Farmers Ins. Exchange* (1996) 47 Cal.App.4th 1110, 1115.)

The parties asked the trial court to take judicial notice of the court records of the first lawsuit. We likewise take judicial notice of the court records. (Evid. Code, §§ 452,

subd. (d), 459, subd. (a); *Palmer v. Truck Ins. Exchange* (1999) 21 Cal.4th 1109, 1113, fn. 1.) On demurrer, “[t]he noticed material may show the complaint fails to state a cause of action although the bare allegations do not disclose this defect.” (*Gilbert v. State of California* (1990) 218 Cal.App.3d 234, 241.)

## **2. The Cross-Complaint Was Properly Dismissed**

The Hargresses argue that First Midland lacks standing to challenge the 2005 Judgment because First Midland was not a party to the first lawsuit. First Midland did not come into the picture until *after* the 2005 Judgment, when it purchased the Property from Khan, even though the 2005 Judgment extinguished Khan’s lien on the Property. First Midland is now attacking the validity of that judgment in its cross-complaint. The cross-complaint asserts that the provisions of the 2005 Judgment are “in error, invalid and in excess of the Court’s jurisdiction.”

First Midland is the successor in interest on Khan’s claimed lien on the Property. Ordinarily, an action attacking the validity of a judgment “is brought by the former defendant, but a third person whose interests are adversely affected by the judgment or decree may be entitled to relief.” (8 Witkin, Cal. Procedure (5th ed. 2008) Attack on Judgment in Trial Court, § 217, pp. 824-825.) “‘A stranger to the record, who was not a party to the action in which the judgment was rendered . . . is not prohibited from impeaching the validity of the judgment in a collateral proceeding; but in order to do so he must show that he has rights, claims, or interests which would be prejudiced or injuriously affected by the enforcement of the judgment, *and which accrued prior to its rendition*, unless the judgment is absolutely void. Thus situated he may attack the judgment on the ground of want of jurisdiction, or for fraud or collusion; but he cannot object to it on account of mere errors or irregularities . . . .’” (*Consolidated Rock Prod. Co. v. Higgins* (1942) 54 Cal.App.2d 779, 781, italics added; *Villarruel v. Arreola* (1977) 66 Cal.App.3d 309, 317; *Mary R. v. B. & R. Corp.* (1983) 149 Cal.App.3d 308, 315. See also *Bennett v. Wilson* (1901) 133 Cal. 379, 386 [a nonparty to an action may impeach

the judgment “where the rights of the party existing at the date of the judgment were affected; and where the defeat of jurisdiction appeared from the record itself”].)<sup>2</sup>

In this instance, First Midland did not acquire an interest in the Property “which accrued prior to [the] rendition” of the 2005 Judgment. (*Consolidated Rock Prod. Co. v. Higgins, supra*, 54 Cal.App.2d at p. 781.) First Midland’s interest in the Property arose six months *after* the 2005 Judgment was rendered. Thus, First Midland is not properly situated to challenge errors contained in a final judgment. If the relief awarded in a judgment is erroneous, the judgment must be attacked by a timely motion for new trial or in an appeal. (*Ostling v. Loring* (1994) 27 Cal.App.4th 1731, 1749.) “Absent an appeal from the judgment we have no jurisdiction to review it . . . . A party who fails to take a timely appeal from a decision or order from which an appeal might previously have been taken cannot obtain review of it on appeal from a subsequent judgment or order.” (*Ibid.*)

A judgment is “in respect to the matter directly adjudged, conclusive between the parties and their successors in interest by title . . . provided they have notice, actual or constructive, of the pendency of the action or proceeding.” (Code Civ. Proc., § 1908, subd. (a)(2).) The 2005 Judgment was recorded against the Property in July 2005. The purpose of the recording statutes is to protect bona fide purchasers who invest substantial sums of money in reliance on an honest belief that they are acquiring a good title; a bona fide purchase occurs when there is no actual or constructive notice of another’s rights. (*Melendrez v. D & I Investment, Inc.* (2005) 127 Cal.App.4th 1238, 1251.)

When First Midland acquired its purported interest in November 2005, it did so with actual or constructive knowledge that the interest Khan was conveying did not exist. The 2005 Judgment states, on its face, that Khan “own[s] no right, title, estate, lien, or

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<sup>2</sup> A judgment is absolutely void if the court lacks fundamental jurisdiction over the parties or the subject matter. (*In re Harris* (1993) 5 Cal.4th 813, 836; *Carr v. Kamins* (2007) 151 Cal.App.4th 929, 933.) First Midland does not claim that the court lacked personal jurisdiction over Khan or subject matter jurisdiction.

interest whatsoever in the Property.” First Midland does not deny that it had notice of the recorded 2005 Judgment.

It is inappropriate to confer standing to challenge a judgment on a nonparty to the action that acquired its interest in the subject matter of the action long after the matter has been judicially resolved. Here, First Midland “acquired” the Property from Khan knowing full well that Khan’s interest was extinguished by a court order rendered six months earlier. First Midland’s claim of injury or prejudice is a manufactured one, because it knowingly purchased the Property from someone adjudged to have no interest in the Property. First Midland is not a bona fide purchaser. Equity should not intervene to disturb a final judgment on behalf of a litigant who knowingly purchased property from someone who had no interest in the property.

**DISPOSITION**

The judgment (order of dismissal) is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

CHAVEZ, J.